

Massachusetts Department of Correction

DNA Sample Collection

103 DOC 487

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MASSACHUSETTS DEPARTMENT OF CORRECTION	DIVISION: OFFICE OF THE COMMISSIONER
TITLE: DNA SAMPLE COLLECTION	NUMBER: 103 DOC 487

PURPOSE: To establish Department of Correction ("Department") policy for the collection of Deoxyribonucleic Acid ("DNA") samples from inmates pursuant to M.G.L. c. 22E, and as otherwise required by court orders and Massachusetts law.

REFERENCES: M.G.L. c. 124, § 1 (j), (o) and (q), M.G.L. c. 22E, §§ 1-15.

APPLICABILITY: Staff/Inmates.

PUBLIC ACCESS: Yes.

LOCATION: Department's Central Policy File
Institution Policy File
Inmate Library.

RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:
Commissioner
Superintendents

EFFECTIVE DATE: 08/23/2017

CANCELLATION: 103 DOC 487 cancels all previous Department policies, statements, bulletins, orders, notices, rules and procedures regarding DNA sample collection that are inconsistent with this policy.

SEVERABILITY CLAUSE:

If any part of 103 DOC 487 is, for any reason held to be in excess of the authority of the Commissioner, such decision shall not affect any other part of this policy.

487.01 **Definitions**

Adjudication as a Youthful Offender - A juvenile adjudication on an indictment pursuant to G.L. c. 119, § 58.

Central DNA Coordinator - The employee designated by the Commissioner to coordinate DNA collection activities within the Department of Correction.

Conviction - For the purpose of this policy, the term "conviction" is defined as an adjudication of guilt and the imposition of a sentence or other sanction by a Massachusetts court.

The term "conviction" shall include:

- A current conviction;
- A former conviction;
- An adjudication as a "sexually dangerous person" pursuant to M.G.L. c. 123A;
- Any disposition referenced in Attachment I to this policy that is identified as a conviction.

The term "conviction" shall not include:

- A conviction in any court other than a Massachusetts state court;
- Any disposition referenced in Attachment I to this policy that is not identified as a conviction;
- Civil commitments, including but not limited to, civil commitments to the Massachusetts Alcohol and Substance Abuse Center ("MASAC") or MCI-Framingham pursuant to M.G.L. c. 123, § 35.

Designated Offenses - M.G.L. c. 265, §§ 1, 13, 13B, 13F, 13H, 14, 15, 16, 17, 18, 18A, 18B, 18C, 22, 22A, 23, 24, 24B, and 26; M.G.L. c. 266, §§ 14 and 15; and G.L. c. 272, §§ 2, 3, 4A, 4B, 16, 17, 29, 29A, 29B, 35, 35A and 53A. (Note: A violation of M.G.L. c. 272, § 53A(a) (prostitution, either party), is a misdemeanor. A violation of § 53A(b) (paying or accepting payment for child under 14 prostitution) is a felony. All other Designated Offenses are felonies.)

DNA Coordinator - An employee appointed by the superintendent who is trained by the Department to

enter DNA information into the Inmate Management System ("IMS").

DNA Liaison - A Department employee of a facility's Criminal Records Processing Unit who is appointed by the superintendent to act as the DNA liaison to the Office of the Commissioner.

Effective Date 1 (ED 1) - December 29, 1997, the effective date of St. 1997, c. 106, which requires the submission of a DNA sample by any person convicted of any of 33 Designated Offenses, or of an attempt or a conspiracy to commit any Designated Offense.

Effective Date 2 (ED 2) - February 10, 2004, the effective date of the amendment to G.L. c. 22E, § 3 requiring the submission of a DNA sample by any person convicted of an offense that is punishable by imprisonment in the state prison (i.e., a felony) or any person adjudicated a youthful offender by reason of said offenses.

Emergency Draw - A DNA sample collection, other than sample collection at the time of admission, classification, transfer or release, as may be authorized by the Commissioner.

Felony - The term "felony" shall mean a conviction punishable in the state prison. For the purpose of this policy, so long as the statute provides for the potential punishment of imprisonment in the state prison, an inmate shall be deemed to have been convicted of a felony, even if the inmate was not sentenced to imprisonment in the state prison.

Incarceration - For the purpose of this policy, the term "incarceration" is defined as the commitment of an individual to a correctional facility by order of a court for any reason. The term "incarceration" is applicable only with respect to (1) persons who were incarcerated on ED 1 who had a past conviction for the 33 Designated Offenses, regardless of the reason for said incarceration, and (2) persons who were incarcerated on ED 2 who had a previous felony conviction, regardless of the reason for said incarceration.

The term incarceration shall not include:

- Pretrial detention, including pretrial detention pursuant to M.G.L. c. 276, § 52A;
- Placement at the Treatment Center pending a probable cause determination, unless the inmate is also serving an outstanding criminal sentence;
- Civil commitment to Bridgewater State Hospital, unless the inmate is serving an outstanding criminal sentence at the time of admission;
- Civil commitment to MASAC or MCI-Framingham pursuant to M.G.L. c. 123, § 35.

Inmate Management System ("IMS") - The Department's electronic information system that provides processing, storage and retrieval of inmate related information needed by Department personnel and other authorized users within the criminal justice system.

Youthful Offender - Pursuant to M.G.L. c. 119, § 52, a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and seventeen, an offense against a law of the Commonwealth which, if he or she were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of M.G.L. c. 269, § 10 (a), (c) or (d), or M.G.L. c. 269, § 10E.

It is noted that the juvenile justice statutes were amended in 1996, with the effective date July 27, 1996. Youthful offender adjudications commenced with respect to offenses committed on or after July 27, 1996.

487.02 **General Policy**

1. It is the policy of the Department to collect DNA samples from (1) all inmates in Department custody who are subject to the provisions of M.G.L. c. 22E; and (2) all inmates who are ordered by a court to provide a DNA sample (see § 487.10(1)). The submission of such DNA sample shall not be stayed pending a sentence appeal,

motion of new trial, appeal to an appellate court or other post-conviction motions or petitions.

2. The Massachusetts State Police Combined DNA Index System Unit (CODIS Unit) has identified the following six (6) categories for inclusion in the Massachusetts DNA Database:

- (a) Anyone convicted as an adult of any of the 33 Designated Offenses between ED 1 and ED 2;
- (b) Anyone convicted as an adult or a Youthful Offender of a felony on or after ED 2;
- (c) Anyone convicted as an adult of any of the 33 Designated Offenses prior to ED 1, and incarcerated in a prison or house of correction for any crime after ED 1;
- (d) Anyone convicted as an adult or a Youthful Offender of any felony prior to ED2, and incarcerated in a prison, house of correction or Department of Youth Services facility for any crime after ED 2;
- (e) Anyone convicted as an adult of any of the 33 Designated Offenses prior to ED 1, and on probation or parole for that same offense on ED 1; and
- (f) Anyone convicted as an adult or a Youthful Offender of any felony prior to ED 2, and on probation or parole for that same offense on ED 2.

487.03 Identification of Inmates Requiring DNA Sample Collection

1. Overview

- a. At reception facilities or facilities receiving Inter-Departmental transfers (e.g., a transfer from a county, federal, and a state facility other than Massachusetts) the determination whether an inmate is required to provide a DNA sample

shall be conducted by Criminal Records Processing Unit (CRPU) staff pursuant to 103 DOC 417, Criminal Records Processing policy. This determination is made pursuant to M.G.L. c. 22E, § 3.

b. The following inmates shall be identified as requiring DNA sample collection pursuant to M.G.L. c. 22E:

i. Conviction for a Designated Offense (as an adult only)

If the conviction date is prior to ED 1, a DNA sample is required if the inmate was incarcerated after ED 1 in a prison or house of correction for any crime, or if the inmate was on parole or probation after ED 1 for the conviction offense. However, a DNA sample is not required if the inmate has already submitted a DNA sample.

If the conviction date is on or after ED 1, a DNA sample is required.

ii. Conviction for a Felony (as an adult or Youthful Offender)

If the conviction date is prior to ED 2, a DNA sample is required if the inmate was incarcerated in a prison, house of correction or Department of Youth Services facility for any crime after ED 2. However, a DNA sample is not required if the inmate has already submitted a sample.

If the conviction date is prior to ED 2, a DNA sample is required if the inmate was on probation or parole for that same offense on ED 2.

If the conviction date is on or after ED 2, a DNA sample is required regardless whether the inmate is deemed to be incarcerated.

2. IMS Review

- a. The IMS includes offenses that provide for the potential punishment of imprisonment in the state prison. These offenses default to the IMS DNA Information screen as offenses that require DNA sampling.
- b. Cases shall be reviewed as follows:
 - i. Review the inmate's current status. If the inmate has a current sentence for an included offense listed on the IMS DNA Information screen, no further review is required.
 - ii. If the inmate is not currently serving a sentence for an included offense, review prior convictions recorded in the IMS listed on the IMS DNA Information screen. If the IMS lists a prior conviction for an included offense, no further review is required.
 - iii. If the IMS does not list a prior conviction for an included offense listed on the IMS DNA Information screen, review prior convictions recorded in the Criminal Justice Information System ("CJIS") or other legal documentation.
- c. For all inmates reviewed, document whether or not the inmate requires DNA sampling and any other pertinent information on the IMS DNA Information screen.

3. Determination of Prior Collection

The DNA Liaison shall run the IMS DNA Report to identify inmates who require DNA sampling, but who have not yet had samples collected.

487.04 DNA Sample Collection Determination

As set forth below, identified staff shall determine whether a DNA sample must be collected upon the following events: Admission; Subsequent Classification;

Prior to Inmate's Transfer; Prior to Release and Emergencies.

1. Admission

When a sample is required and has not previously been collected, a sample shall be obtained during the reception process. A notation documenting the collection of the sample shall be entered into the IMS DNA Information screen within one business day of collection.

2. Classification and Transfer

Upon each subsequent classification, the assigned Correctional Program Officer ("CPO") shall review the IMS Legal Issues or the DNA Information screen to ensure that a DNA sample has been collected if required. The assigned CPO shall ascertain from the DNA Liaison whether the inmate requires DNA sample collection and note on the classification report one of the following:

DNA sample required, secured; or
DNA sample required, not secured, _____; or
(Explain)
DNA sample not required as of _____.
(Date)

Particular attention shall be paid to outstanding legal issues. Outstanding legal issues shall be monitored until resolved. When the legal issue(s) is/are resolved, the assigned Criminal Records Processing Unit ("CRPU") staff shall re-evaluate the inmate's criminal history to determine whether a DNA sample must be collected. If a sample is required, this shall be documented in the IMS DNA Information screen.

Prior to any transfer, the Transfer Coordinator shall conduct a final review to ensure that a DNA sample has been collected where required. Under no circumstances shall an inmate who is required to provide a DNA sample pursuant to M.G.L. c. 22E, § 3, be transferred to lower custody, laterally, or to higher custody or to a county,

out of state or federal facility, until the sample has been properly collected.

3. Release

- a. Consistent with 103 DOC 404, Inmate Release Policy, the DNA Liaison shall review the IMS notifications for upcoming releases and complete the IMS Notifications screen. Prior to release, the Release Coordinator shall review the Preparations and Notifications and Release Clearance screens to ensure that DNA has been collected if required.
- b. When preparing the Release Preparation Form (Attachment I to 103 DOC 404) at the time of discharge preparation, the Release Coordinator shall review the IMS DNA Information screen to verify that DNA has been collected if required.
- c. At all sites, in the event that a DNA sample has not been previously obtained, the Release Coordinator shall immediately notify the DNA Liaison. The DNA sampling must be obtained prior to the inmate's release from Department custody. Sampling shall be scheduled for two weeks prior to the actual release date. In the event the inmate refuses, this time frame will allow for a planned response. A notation documenting the collection of the sample shall be entered in the IMS DNA Information screen.

4. Emergency Draw

- a. The DNA Liaison shall notify the Central DNA Coordinator if an emergency draw is required. An emergency draw may be required in situations, including, but not limited to, the issuance of a judicial order for the immediate release of an inmate, pursuant to a writ of habeas corpus or a motion to revise or revoke the sentence. At MCI-Framingham, an emergency draw may be necessitated by the admission of an inmate

to serve an extremely short or "weekend" sentence. If an emergency draw is needed during non-business hours, the shift commander shall notify the Central DNA Coordinator via the duty station. The Central DNA Coordinator shall contact the Massachusetts State Police CODIS Unit to arrange for the emergency draw and apprise the shift commander of such arrangements.

- b. The Commissioner may authorize an emergency DNA sample collection, as may be required from time to time. The Central DNA Coordinator shall contact the Massachusetts State Police CODIS Unit to arrange for the emergency draw.

5. County, Out-of-State, Federal and International Custody

- a. The County, Federal and Interstate ("CFI") Manager shall maintain a current list of inmates who are in County, Interstate or Federal custody, but who have not previously provided DNA samples required by M.G.L. c. 22E, § 3. The records manager at committing sites shall provide the Central DNA Coordinator with a list of all Department inmates who are serving concurrent Massachusetts sentences in other jurisdictions.
- b. The CFI Manager shall provide a DNA contact person designated by each County with the names of all Department inmates in the County's custody who have not provided DNA samples required by M.G.L. c. 22E, § 3. The Commissioner shall request that the Sheriff coordinate DNA collection with the Massachusetts State Police. The CFI Manager shall monitor the process to ensure that DNA is collected from said inmates. In the event that it appears that a DNA sample will not be collected from a Department inmate in County custody, the CFI Manager shall coordinate the inmate's transportation to a

Department facility for DNA sample collection.

- c. The CFI Manager shall ensure that each Department inmate in Interstate or Federal custody who requires DNA sampling is transported to a Department facility for DNA sample collection.
- d. The records manager at committing sites shall provide a letter of notification (Attachment II) by certified mail to each Department inmate serving a concurrent Massachusetts sentence in another jurisdiction who requires DNA sampling, advising each inmate of his/her obligation to provide a DNA sample pursuant to M.G.L. c. 22E, § 3. The Central DNA Coordinator shall maintain a current list of all Department inmates who are in international custody and provide the Director of the Massachusetts State Police CODIS Unit with the list as updates are entered.

6. IMS DNA Audit Report

On a weekly basis, the Central DNA Coordinator shall convey an IMS DNA Audit Report to the Massachusetts State Police CODIS Unit.

487.05 DNA Sample Collection Procedures

1. At committing facilities, weekly DNA sampling shall be scheduled for newly admitted inmates. At all other sites, DNA sampling shall be scheduled as necessary, upon approval of the Central DNA Coordinator.
2. The Massachusetts State Police CODIS Unit personnel shall collect DNA samples.

NOTE: Only a person licensed and trained by the Director of the State Police or designee shall collect DNA samples pursuant to M.G.L. 22E, § 3 and 4.

3. A DNA Coordinator shall copy the inmate

notification letters and staple together copies of the Spanish and English versions.

4. The Massachusetts State Police CODIS Unit shall supply the DNA kits and all collection material.
5. A DNA Coordinator shall call the inmate(s) to the sampling area, verify the Department identification of the inmate, and provide the inmate with a copy of the memo from the Commissioner explaining the DNA statute and the DNA assessment- Attachment III, the DNA Reimbursement Consent Form (English and Spanish).
6. In the presence of the inmate, Massachusetts State Police CODIS Unit personnel shall open the DNA kit and remove all components from kit envelope.
7. A Massachusetts State Police CODIS Unit personnel shall verify the kit number on the DNA Database Information Card, DNA Database Collection Card, Brown Manila Envelope and White Envelope. If all four numbers do not match, the kit shall be "wasted". **DO NOT USE THE KIT** if the kit envelope integrity seal is broken.
8. If the kit is "wasted," the kit is destroyed. No wasted kits are tracked.
9. A Massachusetts State Police CODIS Unit personnel shall collect the inmate's personal information. At MCI Cedar Junction, Department staff shall fill out the inmate information card before the Massachusetts State Police CODIS Unit personnel arrives at facility. At all other facilities, the Massachusetts State Police CODIS Unit personnel shall enter all the inmate information.
10. A Massachusetts State Police CODIS Unit personnel shall legibly sign the Fingerprint Card on the line provided.
11. The Massachusetts State Police CODIS Unit personnel shall collect the blood sample as follows:

- a. Put on bio-hazard barrier gloves (not provided in kit)
- b. Wipe the tip of inmate's left or right ring (or other) finger with the alcohol prep pad provided.
- c. Using the sterile, fixed depth lancet provided, (or other appropriate lancet) prick the inmate's finger.
- d. While holding the inmate's finger over one of the four circles printed on the FTA Blood Collection Paper, milk the inmate's finger allowing two drops of blood to fall on the card, within the circle.
- e. Repeat the above procedure (Step 11(d)) using the three remaining circles.
- f. Using the sterile gauze pad provided, wipe off any remaining blood from the inmate's finger, then affix the adhesive bandage to the inmate's finger.
- g. Discard used lancet, alcohol prep pad, gauze pad and barrier gloves consistent with exposure of concern protocol. **Do not** place used components in the kit envelope.

NOTE: To avoid contamination, it is critical not to touch the FTA Blood Collection Paper or allow the paper to come into contact with another FTA Blood Collection Paper during the drying and packaging process.

12. Massachusetts State Police CODIS Unit personnel shall allow the blood on the card to **AIR DRY** for approximately 30 minutes. After 30 minutes, place the Database Collection Card sideways in the self-sealing plastic specimen bag provided, then seal the bag. **DO NOT** remove the moisture absorbing packet from the specimen bag.
13. Massachusetts State Police CODIS Unit personnel shall place the plastic specimen bag (containing the blood card) in the white kit envelope, moisten the white kit envelope flap and seal envelope. (**NOTE:** In order to avoid contamination of the sample, the envelope flap shall be

moistened with a sponge. Under no circumstances shall the DNA Coordinator use his or her tongue to moisten the envelope flap.) The DNA Coordinator shall affix the security seal where indicated on the envelope, then initial the seal and date.

14. Massachusetts State Police CODIS Unit personnel shall place the sealed white kit envelope and the DNA Database Information Card in the manila kit shipping envelope, then seal the manila envelope and affix the shipping seal where indicated. (**NOTE:** In order to avoid contamination of the sample, the envelope flap shall be moistened with a sponge. Under no circumstances shall the DNA Coordinator use his or her tongue to moisten the envelope flap.)

NOTE: Massachusetts State Police CODIS Unit personnel shall perform a quality control check before sealing envelope by matching all of the numbers, signing in appropriate areas and sealing with appropriate seals.

15. Massachusetts State Police CODIS Unit personnel shall collect all DNA samples and return to the State Police CODIS Headquarters where the kits are entered into their database.

487.06 Failing to Provide a DNA Sample Collection

1. M.G.L. c. 22E, § 11 provides:

Any person required to provide a DNA sample pursuant to this chapter and who, after receiving written notice, fails to provide such DNA sample within 1 year of conviction, adjudication or release from custody, as required by section 3 [of this chapter], whichever occurs first, shall be subject to punishment by a fine of not more than \$1,000 or imprisonment in a jail or house of correction for not more than six months or both.

2. In the event that an inmate, other than an inmate civilly committed to Bridgewater State Hospital, refuses to provide a DNA sample upon request, the inmate shall be placed on awaiting action status and the Deputy Superintendent for Classification and Treatment shall be notified. The Deputy Superintendent shall designate correctional personnel to seek the inmate's compliance by explaining the requirements of the statute to the inmate as well as the Department's intent to refer any and all refusals for prosecution. Should the inmate continue to refuse, the Superintendent shall contact the Commissioner to consider employing reasonable force to assist in the DNA sample collection as authorized by M.G.L. c. 22E, § 4(a). Under no circumstances shall spontaneous force be utilized to obtain a DNA sample. In the event of a refusal by an inmate who is civilly committed to Bridgewater State Hospital, the Superintendent shall be notified. The Superintendent shall contact the Central DNA Coordinator to determine appropriate resolution.
3. An inmate's refusal to provide a DNA sample upon request shall be documented in a disciplinary report and a departmental incident report. Offenses shall include, but not be limited to, disobeying an order, violating any Department rule and violating any law of the Commonwealth of Massachusetts.

487.07 **Cost Assessment**

1. G.L. c. 22E, § 4(b) provides:

The cost of preparing, collecting and processing a DNA sample shall be assessed against the person required to submit a DNA sample, unless such person is indigent as defined in section 27A of chapter 261 [of the Massachusetts General Laws]. The cost of preparing, collecting and processing a DNA sample shall be determined by the secretary for administration and finance in consultation with the director and shall be paid to the Department [of State Police] and retained by it to offset costs associated with creating, maintaining and administering the state DNA database.

2. The cost of preparing, collecting and processing a DNA sample from an inmate shall not be collected unless

the inmate voluntarily signs a DNA Reimbursement Consent Form (Attachment IV) to signify his/her consent for the institutional treasurer to withdraw funds from the inmate's accounts.

3. An inmate's refusal to sign a DNA Reimbursement Consent Form shall not affect the actual collection of the sample.

487.08 Conviction Reversal

1. The reversal of a conviction for a DNA offense or the revision of the conviction to a non-DNA offense subsequent to the collection of a DNA sample is governed by M.G.L. c. 22E, § 15, which provides:

Any person whose DNA record has been included in the state DNA database may apply to the superior court to have such record expunged on the grounds that the conviction or judicial determination that resulted in the inclusion of the person's DNA record in the state DNA database has been reversed and the case dismissed; provided, however, that one year shall have elapsed from the date the judgment reversing or dismissing the conviction became final or such person shall have obtained, in writing, authorization from the district attorney that no further prosecution is contemplated under the original offense for which such person was convicted or for which the original judicial determination was entered.

2. Upon receipt of information that an inmate's conviction for a DNA offense has been reversed, and subject to a subsequent CJIS review by CRPU staff to confirm that the inmate no longer meets the requirements set forth in section 487.03, the superintendent shall notify the Director of the Massachusetts State Police CODIS Unit in writing, with copies to the Commissioner and the inmate.
3. Upon receipt of notification from the Massachusetts State Police CODIS Unit that an inmate's DNA is no longer to be maintained in the

Massachusetts State Police DNA database, the Central DNA Coordinator shall notify the facility's DNA Liaison, who shall amend the IMS DNA Information screens. If the inmate is no longer in custody, the Central DNA Coordinator shall update the IMS DNA Information screen.

487.09 **Erroneous DNA Samples**

1. Staff shall make all reasonable efforts to avoid DNA sampling errors. However, a DNA sampling error could occur under circumstances including:
 - a. DNA sample collection from an inmate who is not subject to DNA sampling under M.G.L. c. 22E, § 3;
 - b. DNA sample collection from an inmate who has already provided a DNA sample pursuant to M.G.L. c. 22E, § 3;
 - c. Improper DNA sample identification.
2. The superintendent shall be notified upon the discovery that a DNA sampling error has occurred, and an incident report shall be submitted. The superintendent shall notify the Director of the Massachusetts State Police CODIS Unit in writing, with copies to the Commissioner and the inmate.
3. Upon receipt of a response from the Director of the Massachusetts State Police CODIS Unit, the Central DNA Coordinator shall ensure that the IMS DNA Information screen is modified appropriately.

487.10 **Other DNA Sample Collection**

1. Court Orders
 - a. Court orders for DNA sampling by outside agencies (e.g., District Attorney) shall be referred to the superintendent. The superintendent shall make arrangements to facilitate on-site collection of the sample by such persons designated by the Court order and notify the Central DNA Coordinator.

- b. Court orders requiring the Department to transport an inmate to an outside location (e.g., police laboratory) shall be referred to the superintendent, who shall make arrangements for the transportation of the inmate and notify the Central DNA Coordinator.
- c. Court orders requiring a DNA sample to be collected directly by the Department's personnel shall be referred immediately to the Central DNA Coordinator.

2. Paternity Determinations

The Department of Children and Families ("DCF") collects DNA samples to assist paternity determinations. Requests for DNA sampling from the DCF shall be referred to the superintendent. The superintendent shall make arrangements to facilitate on-site collection of the sample by such persons designated by the DCF.

3. Requests by Other Jurisdictions

Requests for DNA samples received from other jurisdictions shall be referred to the Central DNA Coordinator.

4. Requests from Inmates' Attorneys

Requests by inmates' attorneys to conduct DNA sampling on their inmate clients shall be referred to the Central DNA Coordinator and to the superintendent of the facility for processing.

5. Documentation

DNA sampling conducted pursuant to court orders, paternity determinations or any other purpose, other than sampling conducted pursuant to M.G.L. c. 22E, shall not be documented in the IMS DNA Information screen.

487.11 **DNA Inquiries**

DNA database information shall be deemed Criminal Offender Record Information ("CORI"). Response to inquiries regarding DNA sample collection from individual inmates shall be subject to the standards set forth in 103 DOC 153, CORI Regulations. Staff shall also refer persons making such inquiries to the Massachusetts State Police CODIS Unit, as the official keeper of DNA database records. All other inquiries regarding DNA collection shall be referred to the Central DNA Coordinator.

487.12 **Audits**

The Central DNA Coordinator shall be responsible for conducting periodic audits of the DNA collection process and records.

ATTACHMENT I: DISPOSITIONS

CJIS Code	Disposition	Conviction
ADMF ASF	Admit to a Finding: admission by defendant that criminal charges are true or that there is sufficient evidence that a judge or jury could find such facts true. Court may either continue the case without a finding for a period of time (see CWOFF) or enter a finding of guilty. Also known as admission to sufficient facts.	No
APP	Appeal: a resort to a higher court for the purpose of obtaining a review of a lower court's decision and reversal of the lower court's judgment. This may also refer to when a defendant, having been convicted in a jury-waived session in the district court, was able to appeal his case and to obtain a six person jury trial under the old de novo system. <i>Note: An appeal may indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	No
APP WD	Appeal Withdrawn: when a defendant withdraws his/her appeal to a higher court. <i>Note: An appeal withdrawn may indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	No
B	Bail: a monetary or other form of security given to ensure the appearance of the defendant at every stage of the proceedings. The court may as a condition of bail order the defendant to be supervised on pretrial probation and agree to certain conditions.	No
BF	Brought Forward: when defense or prosecutor moves to advance the case prior to the date previously set for hearing or trial.	No
BO or BOGJ	Bound Over: when probable cause is found to exist at a preliminary hearing, the court directs that the case be bound over for action by the grand jury.	No
BOF	Balance of Fine: amount of fine due set by court.	No
C	Continued: court will continue case for another date for hearing, trial, etc.	No
CASP	Community Alcohol Safety Program: refers to a condition of probation ordered by the court usually where the charge is first offense of operating under the influence.	No
CBF	Case Brought Forward: when defense counsel or prosecutor moves to advance the case prior to date previously set for hearing/trial by the court.	No
CC	Court Costs: costs imposed by the court. <i>Note: Imposition of court costs may indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
CCI	Court Costs Included: see above. <i>Note: Imposition of court costs may indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
CMNTY SRV	Community Service: condition of bail or probation ordered by the	See Note

	court which includes a specific period of hours of service to the community. <i>Note: Imposition of community service may indicate a conviction. However, because community service is an intermediate sanction, a court may dismiss the charges upon completion of the community service. In the absence of another indication of a conviction, contact the court.</i>	
CMTD* (OR COM)	Committed; incarcerated	Yes
CMUT	Commuted: the substitution of a lesser penalty or punishment for a greater one. Sentences can only be commuted by the Governor with the advice and consent of the Executive Council. <i>Note: The substitution of a lesser penalty or punishment may constitute a conviction.</i>	See Note
CONC*	Concurrent: sentences to be served at the same time or to run together.	Yes
CONS	Consecutive: sentences to be served one after another.	Yes
CWOF or CWF	Continued without a finding: not considered a conviction. The court allows the defendant to "save" his record and not have a guilty finding entered as long as he completes a period of probation without further criminal charges and complies with the terms of probation. Most often occurs where the defendant has admitted to sufficient facts (see above).	No
DEL	Delinquent: a child between the ages of 7 and 17 who violates any city ordinance, town by-law or commits a crime against the commonwealth. Upon a finding of delinquency, the judge may commit the juvenile to the custody of DYS until his/her 18 th birthday, or until his/her 21 st birthday if after a jury trial the court finds that his/her release poses a danger to the public. <i>Note: Refer to 103 DOC 487.03 for juvenile adjudications.</i>	See Note
DF	Default: failure by the defendant to appear in court during criminal case; a warrant will be entered for his/her arrest.	No
DISCH	Discharged: released from supervision of the court.	No
DISM	Dismissed: the court may dismiss a case for various legal reasons. The commonwealth has the remedy of appeal if a case is dismissed over its objection.	No
DRC	Dismissed at Request of Complainant: refers to criminal charges being dismissed based upon the victim's assertion to the court that he/she wishes these charges to be dismissed.	No
DRD	Dismissed Request Defense: in MA, the prosecution must agree to dismissal of criminal charges against the defendant; the court may not on its own dismiss criminal charges based upon the request of the defense.	No
DWOP	Dismissed Without Prejudice: the Commonwealth may file new complaint upon additional evidence or witness coming forward.	No
DYS	Department of Youth Services: state agency that juveniles are	See Note

	committed to until the ages of 18 or 21, respectively, upon finding of delinquency or adjudication as Youthful Offender by the court. <i>Note: Refer to 103 DOC 487.03 youthful offender.</i>	
DY	Day(s): may refer to number of days the defendant was held awaiting trial as being served; or period of sentence following finding of guilt.	No
EXTN	Extended: continued for a period of additional time.	No
F&A (OR F/A)	From & After indicates a sentence to be served consecutively to another sentence (not concurrent).	Yes
FEE	Fee: cost charged by court.	No
FILE	Filed: case placed on file by court and disposes of case without the defendant having offered any admission to the criminal charges; although the case has not been dismissed, the case is placed on file which allows the prosecutor to move to reopen the case in the future.	No
FILE NF	Filed No Finding: a defendant's original plea is "not guilty" and the court may dispose of case with the Commonwealth's consent and place it on file. This does not prevent the Commonwealth from moving to reopen the case in the future.	No
FINE	Fine: amount set by statute that defendants are required to pay based upon crimes charged and committed.	Yes
FJ	First Instance Jury Trial: formerly referred to de novo system in which a defendant could have a bench trial and then if convicted could appeal the trial to a jury, or waive the bench trial and go straight to the jury.	N
F&NW	Forthwith & Not Withstanding: refers to sentence to be served immediately.	Yes
FPA	File Pending Apprehension	No
FROM/AFT	From & After (not concurrent): see above.	
FRTH	Forthwith: court may order defendant to pay fines or monies owed immediately.	No
G	Guilty: conviction of criminal charge; a finding by judge or jury beyond a reasonable doubt that defendant committed crime(s) charged by the Commonwealth.	Yes
G FILED	Guilty filed: conviction of criminal charge without a period of incarceration or probation.	No
GJ	Grand Jury: body of people (usually 23) summoned to inform on crimes committed within its jurisdiction and to indict persons of crimes when it has been presented with sufficient evidence to warrant holding a person for trial.	No
HC or HOC	House of Correction: county facility for holding inmates on bail or when sentenced to a period of incarceration. The maximum sentence is 2½ years.	Yes
HWB	Held Without Bail: finding by courts that no conditions or monies	No

	will ensure the return of the person for every stage of the criminal proceeding. Also called pretrial detention.	
IND or INDICT	Indictment: a formal written accusation drawn up and returned by a grand jury (GJ) charging one or more persons with a crime. Indictments in adult cases are tried in Superior Court.	No
INDF	Indefinitely: Prior to 1994, a court could give a defendant an indefinite sentence to the state reformatory, with parole eligibility set by the Parole Board. This was abolished in 1994.	Yes
JD	Jurisdiction declined: district court may decline jurisdiction over a case in order that it will be handled in the superior court. Also referred to as Juris Dec.	No
JT	Jury Trial: the defendant has a constitutional right to be tried by a jury of his peers (6 person in district court, 12 persons in superior court with two alternates in both courts). In criminal cases the jury must unanimously find that the defendant committed the crimes charged beyond a reasonable doubt.	No
JURIS DEC	Jurisdiction Declined: please refer to JD above.	No
JUV COMP D	Juvenile Complaint Dismissed: this may occur when a defendant has been indicted as a Youthful Offender and the case proceeds in Juvenile Court as YO case and not as a juvenile case. <i>Note: Refer to 103 DOC 487.03 for youthful offender.</i>	See Note
LIFE	Life: a defendant serving a life sentence is eligible for parole after 15 years, except for life sentences for 1st degree murder which are life without parole.	Yes
MT (or MIS)	Mistrial: order by judge terminating trial before conclusion; generally a new trial will then occur.	No
NDEL	Not Delinquent: See Not Guilty; entered in juvenile court. <i>Note: Refer to 103 DOC 487.03 for youthful offender.</i>	No
NF	No Finding	No
NG	Not guilty: finding by judge or jury that the evidence presented by the Commonwealth did not prove beyond a reasonable doubt that the defendant committed the crimes as charged.	No
NOB	No Bill: when the grand jury declines to indict, it returns a "no bill of indictment."	No
NOLO	Nolo contendere: Latin translation is "I do not wish to contend"; formerly used in the Commonwealth in which a defendant enters a plea in a criminal proceeding who does not admit guilt but states that he will offer no defense against the charges. The defendant may then be declared guilty, yet retain the right to deny the validity of the finding in related proceedings. <i>Note: In the absence of another indication of a conviction, contact the court.</i>	No
NOS	Notice of Surrender: defendant has been given written notice by the probation department that the probation officer intends to seek usually a revocation of probation and an imposition of a custodial sentence.	No

NP	Nolle Prosequi (or Nol Prossed): motion by the Commonwealth to dismiss charges as if they were never brought in the first place because of insufficient evidence.	No
NPC	No Probable Cause: finding by court that there is insufficient evidence to believe that a crime has occurred or that the defendant committed a crime.	No
PARD	Pardoned: conditional release under supervision by the parole board; a pardon can only be granted by the Governor with the advice and consent of the Executive Council.	No
PC	Probable Cause: finding by a judge that there is sufficient evidence to believe that a crime has occurred or that the defendant has committed a crime, in order to bind a case over from the district court to superior court for hearing.	No
PD (or &PD)	Paid. <i>Note: Paid may indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
PG	Plea of Guilty: admission by defendant to criminal charges and waiver of right to jury or bench trial. <i>Note: In the absence of an indication that a sentence or other sanction was imposed, contact the court.</i>	See Note
PROB	Probation: the court may order the defendant to be supervised by the probation department with certain conditions and/or programs to be completed during a specific period of time; this may be following a period of incarceration, with a suspended sentence, or straight probation. <i>Note: If pretrial probation, it is not a conviction. Would still appear as open case. If after a determination of guilt, it is a conviction. Under M.G.L. c. 276, § 87, a defendant may be placed on probation (with or without special terms and conditions) prior to trial and without a plea, finding or verdict of guilt. If the defendant successfully completes the probation the case is dismissed. If the defendant fails to satisfactorily complete the probation, the case is brought forward for trial. If probation is imposed after a determination of guilt, the defendant is placed on probation for a set period of time. Probation may be supervised or unsupervised and may include special terms and conditions. If the defendant completes the probationary term, he is discharged. If he fails to comply with probation, he may be sentenced up to the maximum sentence allowable for the original offense.</i>	See Note
PROB EXTN	Probation Extended: court may extend the period of probation that the defendant has been ordered to complete; this may be in order to have additional time to complete community service, a program or upon a finding of a violation of probation, the court may extend the period of probation rather than order the defendant to serve a period of incarceration.	No
PROC ST	Proceedings Stayed	No

PROG	Program: usually refers to a condition of probation that the defendant has been ordered to complete, and may include completion of an alcohol safety awareness program, anger management program or batterer's treatment program, for example. <i>Note: A program requirement may indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
PTP	Pre-Trial Probation: as a condition of bail or release, the court may order the defendant to report to probation prior to the case being resolved.	No
REM	Removed: usually refers to the term of removing a case from a lower court to a higher court.	No
REST	Restitution: amount of monies ordered by the court that the defendant has been ordered to pay as a condition of the sentence. <i>Note: Restitution is an intermediate sanction imposed after determination of guilty, and therefore, may indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
RMT (or REMIT)	Remitted: refers to when the court does not require the defendant to pay court costs or fines due to indigency or other reasons.	No
ROR	Released on Recognizance: defendant is not required to post monies to the court to ensure his/her return during the course of the proceedings and instead is released without the requirement of posting bail money.	No
R/R	Revise and Revoke Sentence: post-conviction remedy of defendant asking the court to change his/her original sentence; sentencing judge may upon certain findings, revoke original sentence and order new sentence or deny the motion. <i>Note: Refers to the sentence, not to the conviction.</i>	No
RSVD	Revised: refers usually to sentencing at the appellate level.	No
SDP	Sexually Dangerous Person: formal adjudication as a sexually dangerous person. Pursuant to G.L. c. 123A, s. 14, if after a trial an individual is found to be a SDP, such person shall be committed to the treatment center for an indeterminate period of a minimum of one day and a maximum of such person's natural life until discharged pursuant to the provisions of section 9. <i>Note: Refer to 103 DOC 487.03.</i>	See Note
SENT	Sentence: after finding by judge of jury on criminal charges, or offer of plea by defendant, the court may sentence a defendant to a period of incarceration (either committed or suspended) and/or probation and other terms.	Yes
SF	Surfine: additional fine required by statute associated with specific crimes.	No
SFI	Surfine Included	No
SFN	Suspended Fine	No

SP	Supervised Probation: <i>Note: May indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
SPS	Split Sentence: after a finding of guilty or as part of a plea bargain, a defendant may be ordered to serve a period of incarceration and the balance on probation.	Yes
SS	Suspended Sentence: when period of incarceration is not ordered to be served but "suspended" during the period of probation; if the defendant successfully completes the probationary period, he/she will not be ordered to serve the sentence (or period of incarceration).	Yes
SS RVK	Suspended Sentence Revoked: see SS; this is when due to violation of probation or further criminal activity, a defendant may be ordered to serve the sentence that had not been imposed but suspended. <i>Note: May indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
STAY	Stay of Order of Sentence: judicial order abeying the period of incarceration for a specific time. <i>Note: May indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
SUMM	Summons: a mandate issued in lieu of arrest requiring the defendant's appearance in criminal court where he/she may be named to appear to answer to criminal charges; or as a mandate requiring an individual to appear as a witness at a trial or hearing.	No
SUP	Support: refers to entry of order of child support in cases of paternity or formerly illegitimacy in criminal court.	No
SURR	Surrendered: refers to having a defendant returned to court; usually refers to defendant on probation and having new criminal activity.	No
SURR DEF	Surrendered on Default: brought to court to answer to charges of having not appeared in court on date required.	No
TB	True Bill: return by the grand jury on one or more indictments holding the defendant on criminal charges; see indictment.	No
TBPD	To Be Paid: refers to court costs, fines or restitution.	No
TD (T&D)	Terminated and Discharged: refers to termination of supervised probation and defendant being discharged from probation.	No
TERM	Terminated: refers to termination of supervised probation.	No
VAC	Vacated: usually refers to the removal of default entered on an individual's criminal record.	No
VN	Violation of Probation Notice: written notice by probation of terms that defendant has allegedly violated; due process rights attach at hearing that will be scheduled. <i>Note: May indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
VOP	Violation of Probation Finding: finding following a hearing before judge concerning whether the defendant has violated the terms of	See Note

	his probation. As a result of a finding, that a defendant is in violation, a judge may revoke a CWOFF and enter a guilty, impose committed time, or extend the term of probation. <i>Note: May indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	
VWF	Victim Witness Fund: statutory fund established. Depending upon whether the defendant is charged with a felony or misdemeanor, he is assessed certain fines that must be paid into the victim witness fund. <i>Note: May indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
WAR	Warrant: issued by court or vested authority naming a person charged with a crime, and commanding their appearance before the court.	No
WAR/WD	Warrant Withdrawn/Recalled: when a defendant appears in court, the warrant will be recalled.	No
WD	Withdrawn: may refer to defendant's withdrawal of appeal to a higher court for review.	No
WKND	To Be Served Weekends: court has authority to order defendant to serve term of incarceration on weekends. <i>Note: May indicate a conviction. In the absence of another indication of a conviction, contact the court.</i>	See Note
YO	Youthful Offender: a person who is subject to an adult or juvenile sentence for having committed, while between the ages of 14 and 17, an offense that if he/she were an adult would be punishable by imprisonment in the state prison, and (a) has previously been committed to DYS, or (b) has committed an offense which involves the infliction or threat of serious bodily harm, or (c) has committed a violation of G.L. c. 269, sections 10(a),(c), (d) or 10E. <i>Note: Refer to 103 DOC 487.03 for youthful offender.</i>	See Note

ATTACHMENT II: NOTIFICATION LETTER

M E M O R A N D U M

TO: All Inmates

FROM: Thomas A. Turco III, Commissioner of Correction

DATE: [Insert Date]

RE: **DNA Sampling**

M.G.L. c. 22E requires that any person who has been convicted or adjudicated as a youthful offender of any offense that is punishable by imprisonment in the state prison, must submit a DNA sample for inclusion in the Combined Offender DNA Information System ("CODIS") database

DNA collection consists of a simple, "pin prick" bloodsample, as well as a simultaneous fingerprinting of all affected inmates. All inmates required to provide a blood sample and fingerprints will be told the time, date and location to report for sampling. M.G.L. c. 22E, § 4 authorizes Department of Correction and other law enforcement personnel to employ reasonable force to assist in collecting DNA blood samples in cases where an individual fails to submit to such collection. Any person who is required to provide a DNA sample pursuant to this chapter and after receiving written notice, fails to provide such DNA sample within 1 year of conviction, adjudication or release from custody, as required by section 3, whichever occurs first, shall be subject to punishment by a fine of not more than \$1,000 or imprisonment in a jail or house of correction for not more than six months or both.

See M.G.L. c. 22E, § 11. In addition, an inmate may be subject to a disciplinary report for failure to comply and may be returned to higher custody or denied a move from his or her current security level.

The DNA testing statute also states that the person whose DNA is sampled is responsible for all costs associated with preparing, collecting and processing the DNA sample, unless the

person is indigent for these testing purposes. The \$110 DNA assessment will be collected if an inmate signs the consent form to signify his/her consent for the Department to withdraw funds from the inmate's account.

Copies of the amended DNA collection statute, as well as the Department of Correction DNA Sample Collection policy, 103 DOC 487, are available in the inmate law libraries for review.

Thank you for your anticipated cooperation in this matter.

ATTACHMENT II: NOTIFICATION LETTER

M E M O R Á N D U M

A: Todos Presos

DE: Thomas A. Turco III, Comisionado de Corrección

FECHA: [Inserte Fecha]

RE: **Muestra de DNA**

M.G.L. c. 22E. requiere que cualquiera persona que ha sido convicta o adjudicada como un delincuente juvenil de cualquier ofensa que es castigada por encarcelación en la prisión del estado, debe someter una muestra de DNA para inclusión en la base de datos del Sistema Combinado de Información de DNA de Delinquentes (Combined Offender DNA Information System, "CODIS").

La recolección de DNA consiste en un sencillo, "pinchazo de alfiler" para la muestra de sangre, así como la simultánea toma de huellas digitales de todos los presos afectados. Todos presos requeridos de proporcionar una muestra de sangre y huellas digitales serán avisados de la hora, fecha y lugar a presentarse para la muestra. M. G. L. c. 22E, §4 autoriza al Departamento de Corrección y otro personal de cumplimiento de la ley de emplear fuerza razonable para asistir en la recolección de muestras de sangre de DNA en los casos donde un preso rehúsa de someterse a la tal recolección. El rehusar de proveer una muestra de sangre de DNA puede hacer sujeto a la persona a pena de una multa de hasta \$1,000 o la encarcelación en una cárcel o casa de corrección por hasta seis meses, o ambos. Vea M. G. L. c. 22E, §11. Además, un preso puede ser sujeto de un informe disciplinario por falla de cumplir y puede ser devuelto a custodia más alta o negársele la movida desde su nivel de seguridad actual.

El estatuto de test de DNA también establece que la persona cuyo DNA es muestreado es responsable de todos los costos asociados con preparar, tomar y procesar la muestra de DNA, a no ser que la persona sea indigente para estos propósitos de test. El gravamen de \$110 por DNA será recaudado si un/a preso/a firma el formulario de consentimiento para significar su consentimiento para que el DOC retire fondos de la cuenta del/de la preso/a.

Copias del estatuto enmendado de recolección de DNA, como también la política del Departamento de Corrección Toma de Muestra de DNA 103 DOC 487, están disponibles para revisar en las bibliotecas legales de preso.

Gracias para su anticipada cooperación en esta materia.

ATTACHMENT III

DNA REIMBURSEMENT CONSENT FORM

A. I, _____, hereby consent to the withdrawal of \$_____ from my personal account and \$_____ from my savings account by the Institutional Treasurer as reimbursement for DNA testing as required by M.G.L. c. 22E, § 4 (b). I further acknowledge that I have read this form and understand it fully, and that my consent to the above-indicated withdrawal(s) is given voluntarily and without duress.

Date: _____

Inmate Signature

B. I, _____, acknowledge that I have read this form and refuse to consent to any withdrawal of funds for DNA testing as required by M.G.L. c. 22E § 4 (b).

Date: _____

Inmate Signature

C. Inmate _____ was presented with this consent form and on this date refused to sign under either paragraph A or B.

Date: _____

Staff Name (please print)

Staff Signature

Job Title

Inmate Commitment Number _____

Date Sample Taken _____

ADJUNTO III

FORMULARIO CONSENTIMIENTO DE REEMBOLSO ADN

A. Yo, _____, por la presente consiento al retiro de \$_____ desde mi cuenta personal y \$_____ desde mi cuenta de ahorro por el Tesorero Institucional como reembolso por test de ADN como requerido por M.G.L. c. 22E, § 4 (b). Yo además declaro que he leído este formulario y lo entiendo completamente, y que mi consentimiento al desembolso(s) más arriba-indicado(s) es dado voluntariamente y sin coacción.

Fecha: _____

Firma del Preso

B. Yo, _____, declaro que he leído este formulario y rehúso consentir a cualquier desembolso de fondos por test de ADN como requerido por M.G.L. c. 22E § 4 (b).

Fecha: _____

Firma del Preso

C. El Preso _____ fue presentado con este formulario de consentimiento y en esta fecha rehusó firmar ya sea bajo párrafo A o B.

Fecha: _____

Nombre del Empleado (letra imprenta por favor)

Firma del Empleado

Título de su Trabajo

Número sentencia del preso _____

Fecha toma de la muestra _____